

OIC PROPOSED FRAUD LEGISLATION

Problem

The National Insurance Crime Bureau (NICB), estimates that \$80 billion in fraudulent insurance claims are paid each year. Hence, it is estimated that the average American household pays over \$950 per year in additional premiums to cover insurance fraud. Although the State of Washington ranks 18th in the nation in property & casualty premium volume, it ranks 12th in questionable claims payments reported to the NICB.

Establishment

The bill creates a fraud division within the Office of the Insurance Commissioner (OIC), to detect, investigate, and prosecute fraud against the insurance industry. The primary focus of the fraud division will be on high impact cases involving organized criminal activity. Increasingly insurance fraud is being committed by sophisticated rings of unscrupulous attorneys, physicians, clinics, and others who conspire to defraud insurers. The NICB estimates that a conspirator pockets an average of \$100,000 per year from this illicit source.

Reporting

Any insurer or licensee of the commissioner that has a reasonable belief that fraud will be, is being, or has been committed is obligated to report the suspected fraudulent activity. Information may be reported to the National Insurance Crime Bureau (NICB), the National Association of Insurance Commissioners (NAIC), or directly to the fraud division. Immunity from liability for releasing this information is provided under R.C.W. 48-50-070.

Confidentiality

Any information in possession or control of the commissioner relating to suspected or actual insurance fraud is confidential by law, privileged, not subject to subpoena, and not discoverable or admissible as evidence in any private civil action. (However, the commissioner or prosecutor is authorized to use the information in any regulatory or legal action as part of the commissioner's legal duties.) The same protections from testimony in a private civil action with regard to the information extend to the commissioner and persons who received the information. Broad confidentiality is also given regarding the receipt and sharing of information with law enforcement, regulatory agencies, and industry groups—in state and out of state—provided the confidentiality is reciprocated.

Staffing and Scope

The anti-fraud program is established that includes both investigation and prosecution of alleged and actual fraudulent claims. To accomplish the purpose of this program, a fraud division is established with the OIC. An initial unit of eleven FTE personnel is proposed. Staffing includes: one chief investigator, five investigators (1 FTE to the Washington State Patrol to augment the auto theft program), one research analyst, and two administrative support staff and two prosecuting attorneys (1 FTE to a local prosecutor and 1 FTE to the Attorney General's Office).

The fraud division has the power to initiate inquiries and investigate suspected insurance fraud. It also has the power to review information from, and share information with federal, state and local law enforcement and regulatory agencies and may cooperate and investigate insurance

fraud that crosses state boundaries. Investigators who have obtained certification under R.C.W. 43.101.095 shall have the power and status of peace officers. Investigated cases will be referred for prosecution to the participating attorneys located in the local prosecutor's office or in the Office of the Attorney General.

In other states, the results of implementing anti-fraud programs has been positive. For example, with a program similarly structured to the one proposed for Washington, Utah produced 82 criminal prosecutions, 12 civil actions and \$ 7.8 million in ordered restitution in 2002. The New York program focuses on auto insurance fraud and is approximately 3 times larger than the program proposed for Washington. This program investigated 291 cases involving 815 arrests and ordered restitution of \$9.6 million in 2004. Also, New York has asserted that their anti-fraud efforts have reduced the loss ratio for their largest private passenger auto writers from .86 in 2002 to .61 in 2004. In addition to restitution being one measure of program results, as shown by the New York experience the reduction in loss ratio can also create a reduction in premiums or forestall increases in premiums. It is important, however, to recognize that the figures will vary year to year based on the value of the cases prosecuted.

Funding

The annual cost of operating the fraud division shall be funded from the insurance commissioner's regulatory account under RCW 48.02.190.

Additional Provisions

The bill increases criminal penalties to include the fine, amount defrauded, and costs of investigation and prosecution. It also requires a fraud warning on applications and claim forms and gives the commissioner rule-making authority to implement and administer the act.